

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA

v.

CHARLES ROBINSON,

Defendant.

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Case No. 1:02CR00045

OPINION AND ORDER

By: James P. Jones
United States District Judge

Eric M. Hurt, Assistant United States Attorney, Abingdon, Virginia, for the United States of America; Dennis E. Jones, Lebanon, Virginia, for the Defendant.

In this criminal case, the defendant has filed a motion to suppress evidence seized pursuant to a search warrant. Having referred this matter to the magistrate judge, and having conducted a de novo review, I hereby adopt the magistrate judge's report and recommendation and deny the defendant's motion to suppress.

I

The defendant, Charles Robinson, is charged in a multiple-count indictment with various criminal offenses relating to the manufacture and distribution of methamphetamine. These charges stem from the seizure of items at the defendant's residence that were found during the execution of a search warrant by members of the

Russell County, Virginia, Sheriff's Department and other state and federal law enforcement agencies. The warrant authorizing the search of the defendant's residence was issued on March 18, 2002, by a state magistrate of Russell County, Virginia, and was based on an affidavit submitted by a deputy sheriff, A. V. Coleman. The information provided in the affidavit was attributed to Jamie Stinson, a police informant, and concerned particulars regarding the defendant's possession and manufacture of methamphetamine. Stinson provided this information in exchange for a grant of immunity from prosecution for himself and his wife on charges pending in another matter and for promises from authorities not to seek forfeiture of his residence.

Following the defendant's indictment, he moved this court to suppress the evidence seized pursuant to the search warrant on the ground of a violation of the Fourth Amendment of the United States Constitution. In addition the defendant requested a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), in order to have the opportunity to attack the sufficiency of the affidavit to the search warrant. The motion was referred to a magistrate judge for report and recommendation pursuant to 28 U.S.C.A. § 636(b)(1)(B) (West 1993 & Supp. 2002). The magistrate judge, after reviewing the facts alleged, determined that an evidentiary hearing

pursuant to *Franks* was not warranted in this matter and has recommended that the court deny the defendant's motion.

In response, the defendant has filed objections to the report and recommendations. The defendant reasserted his previous contention that the omission of Stinson's immunity in the affidavit for the search warrant rendered the affidavit deficient. The defendant has further asserted that the search warrant is deficient on its face because there was insufficient information presented to the state magistrate to establish the credibility and reliability of the informant.

Having reviewed the magistrate judge's report and recommendation, I agree that there is no need to hold an evidentiary hearing pursuant to *Franks*. I must now determine if there was sufficient information contained in the affidavit to establish the reliability and credibility of the informant upon whose information the warrant is based. I find there was sufficient evidence to establish the reliability and credibility of the informant to render the search warrant valid.

II

An affidavit based upon informant hearsay is rarely adequate on its own to support a finding of probable cause. *See United States v. Miller*, 925 F.2d 695, 698 (4th Cir. 1991) (Powell, J. sitting by designation). It is instead necessary to look at

the “totality of the circumstances” in assessing whether a search warrant, issued by a magistrate pursuant to such evidence, comports with the requirements of the Fourth Amendment. *See Illinois v. Gates*, 462 U.S. 213, 238 (1983). There are three factors that the court must take into consideration in assessing the totality of the circumstances: (1) the informant’s veracity and reliability; (2) the basis for the informant’s knowledge, and (3) the degree to which the information has been or can be corroborated. *See United States v. Lalor*, 996 F.2d 1578, 1581 (4th Cir. 1993).

In the present case, the reliability and veracity of the informant has only been impugned by the defendant’s assertion that the informant’s deal with law enforcement somehow made his testimony incredible. However, this assertion belies case law in this circuit “that when an informant is giving testimony in hopes of being treated favorably, there is an indicia of reliability because the informant has nothing to gain from lying.” *See United States v. Patterson*, 150 F.3d 382, 386 (4th Cir. 1998). The presentation of false information to law enforcement would not only have had a deleterious effect on the informant’s ultimate objective, but also would have opened him up to possible criminal prosecution. *See Adams v. William*, 407 U.S. 143, 147 (1972) (holding that because a known informant may be subject to arrest for making a false statement, there is inherent reliability of the information provided).

The basis for the informant's knowledge of the defendant's activities is well established and documented in the affidavit of the search warrant. The affidavit states that the informant had spent considerable time at the defendant's residence purchasing products to manufacture methamphetamine, touring the defendant's property to view his manufacturing operation, using drugs with the defendant, watching DEA instructional videos on methamphetamine, and being taught how to manufacture methamphetamine by the defendant.

Finally, the corroboration of the informant's testimony by law enforcement is detailed in the affidavit by Coleman. In the affidavit, Coleman described that he had personal knowledge that items seized from the informant's residence were consistent with the precursor chemicals and finished product the informant stated that the defendant had supplied to him. This information, combined with the detailed knowledge and description of the defendant's property, provided the magistrate with sufficient corroboration of the informant's testimony.

III

For the aforementioned reasons, it is **ORDERED** that the magistrate judge's Report and Recommendation (Doc. No. 42) is adopted and the defendant's Motion to Suppress (Doc. No. 24) is denied.

ENTER: October 23, 2002

United States District Judge